

Wilmington, Delaware
September 3, 2009

#3229

Sponsor:

Council
Member
Potter

WHEREAS, pursuant to Wilm. C. (Charter) §8-205, a department head, board or commission of the City shall not sell or exchange any real estate belonging to the City or grant any license, easement, right-of-way or other interest over or in such real estate without advertised public notice appearing in at least one daily newspaper of City-wide distribution and “authority by general ordinance and later resolution from the Council so to do”; and

WHEREAS, Wilm. C. §2-621(a) provides that the Council shall by resolution declare a property approved for disposition and authorize the conduct of disposition proceedings by the Real Estate and Housing Department; and

WHEREAS, the provisions of Wilm. C. §2-621(c) provide that governmental agencies, governmental authorities organized pursuant to Title 22 of the Delaware Code and non-profit organizations are exempt from the City’s bid procedures and that upon the declaration of a property as surplus, by resolution of City Council, the City may negotiate an agreement of sale, lease, exchange, or other transfer of such property owned by the City to any such governmental agency, governmental authority or non-profit organizations; and

WHEREAS, the City has acquired an interest in the properties known as 2800 Prestwyck Court, Unit 17 (the “Property”); and

WHEREAS, in accordance with the recommendation of the Department of Real Estate and Housing, the City desires that the interest in the properties be declared surplus and approved for disposition and transferred to the Wilmington Housing Authority (“WHA”)

a non-profit corporation, according to the terms of the Agreement of Sale, attached as Exhibit "A" and incorporated hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that the Council hereby declares as surplus and authorizes and approves the sale of the Property known as 2800 Prestwyck Court Unit 17 to the Wilmington Housing Authority, a non-profit corporation.

BE IT FURTHER RESOLVED that Council authorizes the Mayor or his designee to execute any and all documents necessary to effectuate the transfer of the properties, including any and all undertakings and assurances heretofore.

Passed by City Council,
September 3, 2009

ATTEST: Maribel Ruiz
City Clerk

Approved as to form this
31st day of August, 2009.


Assistant City Solicitor

SYNOPSIS: This Resolution declares as surplus and authorizes and approves the disposition of any legal or equitable interest it may have in the Property known as 2800 Prestwyck Court Unit 17 to the Wilmington Housing Authority according to the terms of the Agreement of Sale, attached as Exhibit "A".

COPY

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (the "Agreement") is made this 8th day of July, 2009, by and between the CITY OF WILMINGTON ("Seller") and WILMINGTON HOUSING AUTHORITY ("Buyer").

WINESSETH THAT:

WHEREAS, Seller is the owner and developer of the Prestwyck Project, being located at 28th and Market Streets in Wilmington, Delaware;

WHEREAS, Seller desires to sell, and Buyer desires to purchase, the seventeenth townhouse unit within the Prestwyck Project, which unit is more particularly depicted on Exhibit "A" attached hereto (the "Property").

NOW THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the parties hereto, intending to be legally bound hereby, do covenant and agree with each other as follows:

1. Purchase and Sale of Property. Subject to the terms and conditions hereinafter set forth, Seller does hereby agree to sell and convey to Buyer, and Buyer does hereby agree to purchase, the Property, together with all of the right, title and interest, if any, of Seller in all easements, privileges and rights belonging to and benefiting the Property and any improvements and appurtenances thereto.
2. Purchase Price. The purchase price (the "Purchase Price") which the Buyer agrees to pay the Seller, and which the Seller agrees to accept for the Property, shall be the sum all acquisition, demolition, soft and hard costs incurred by Seller for the development of the Property. Buyer and Seller must mutually agree on all eligible costs related to Purchase Price. Buyer shall provide Seller with a final calculation of the Purchase Price prior to Closing (as defined in Section 3 below). The Purchase Price shall be paid by Buyer to Seller at the Closing.
3. Closing. The closing under this Agreement (the "Closing") shall take place on the tenth (10th) day following the issuance of a certificate of occupancy for the Property at the offices of the Seller, or at such other time and/or location that is mutually acceptable to both parties. Formal tender of an executed deed and purchase monies is hereby waived.
4. Title and Conveyance. The title to the Property shall be conveyed to Buyer in fee simple by deed containing a special warranty. The title to the Property shall be good and marketable and free and clear of all liens and encumbrances of record, but subject to all existing easements and restrictions of record.
5. As-Is. No representations or warranties of any kind have been made by Seller or anyone on its behalf to the Buyer as to the condition of the Property or any improvements thereon erected. It is understood and agreed by the parties that the Property is sold "AS IS, WHERE IS - WITH ALL FAULTS AND WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED" at the time of Closing.
6. Time is of the Essence. Time is of the essence for the performance of this Agreement.
7. Use of Property. Following Closing, Buyer shall include the Property in its homeownership program that leases property to tenants with the potential to buy the property. Buyer

shall not remove the Property from its homeownership program without the prior written consent of Seller. This Section 7 shall survive Closing.

8. Entire Agreement. This is the entire agreement between the parties in connection with the purchase of the Property. There are no oral promises, conditions, representations, understandings, interpretations, or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition is to be made to this Agreement except by written agreement executed by both parties hereto.

9. Governing Law. The terms, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Delaware. No provision shall be construed for or against any party to this Agreement on the ground that such party drafted this Agreement.

10. Captions and Headings. The captions and headings of the paragraphs hereof are for convenience only and shall not control or affect the meaning or construction of any of the terms or provisions of this Agreement.

11. Binding Agreement. This Agreement (and the benefits and burdens thereof) shall extend to and bind the successors and assigns of the respective parties hereto. Buyer may not assign its rights or obligations under this Agreement without the prior written consent of Seller.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first written above.

SELLER:

CITY OF WILMINGTON

By: 

Name: Timothy Crawl-Bey

Title: Director, Real Estate and Housing

BUYER:

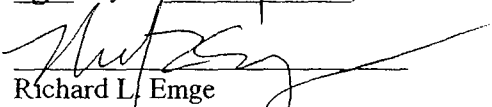
By: 

Name: Frederick S. Purnell, Sr.

Title: Executive Director

Approval as to form this

8 day of July, 2009


Richard L. Emge

Senior Assistant City Solicitor